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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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5 SELOMI M. VILLALTA, No. C 06-4087 SBA

6 Plaintiff, ORDER  
7 v. [Docket No. 15]8 EMILIA BARDINI, Director of the San  
9 Francisco Asylum Office,

10 Defendant.

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12 This matter comes before the Court on Plaintiff Selomi M. Villalta's ("Plaintiff") Motion for  
13 Permission to File a Motion for Reconsideration. Having read and considered the papers presented  
14 by plaintiff, the Court hereby DENIES the Motion [Docket No. 15].

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**Background**

16 On June 30, 2006, plaintiff filed a complaint [Docket No. 1] and a Motion for Leave to  
17 Proceed in forma pauperis [Docket No. 3]. On August 9, 2006, this Court denied plaintiff's Motion  
18 for Leave to Proceed in forma pauperis and dismissed the complaint for failure to state a claim  
19 [Docket No. 4]. On June 29, 2008, plaintiff filed an amended complaint [Docket No. 7].

20 On June 10, 2008, the Court issued an Order to Show Cause why the complaint should not be  
21 dismissed for failure to prosecute. [Docket No. 9]. As of June 29, 2008, no defendant had been  
22 served pursuant to Rule 4 of the Federal Rules of Civil Procedure. *See* Order to Show Cause. A  
23 hearing was set for July 9, 2008 at 4:00 p.m., and held. The plaintiff did not appear but plaintiff's  
24 daughter, Yolanda Martinez, appeared in court and advised the court that Plaintiff had been  
25 deported. The Court thanked Ms. Martinez for advising the court of his deportation and ordered the  
26 case dismissed. The Court also advised Ms. Martinez that she could not file documents on her  
27 father's behalf nor could she appear for him because she is not a licensed attorney. [Minutes  
28 Entry, Show Cause Hearing, Docket No. 11].

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2       The order dismissing the case for failure to prosecute issued on September 30, 2008. [Docket  
3 No. 14]. On October 21, 2008, Plaintiff filed this motion for reconsideration of the dismissal order.

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### **Legal Standard**

5       Under Civil Local Rule 7-9(b), before leave to file a motion for reconsideration is granted, the  
6 moving party must specifically show:

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(1) that at the time of the motion for leave, a material difference in fact or  
law exists from that which was presented to the Court before entry of the  
interlocutory order for which reconsideration is sought. The party also must  
show that in the exercise of reasonable diligence the party applying for  
reconsideration did not know such fact or law at the time of the interlocutory  
order; or

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(2) The emergence of new material facts or a change of law occurring after  
the time of such order; or

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(3) A manifest failure by the Court to consider material facts or dispositive  
legal arguments which were presented to the Court before such interlocutory  
order.

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Local Rule of Civil Procedure 7-9 permits reconsideration of an order if there has been a change in  
a material fact or law since the time the original motion was made.

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### **Analysis**

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Plaintiff contends he served defendant on October 21, 2008 and defendant has failed to  
appear and answer. In theory, the purported service qualifies as a change in material fact. However,  
the Court cannot consider the purported service as grounds for reconsidering its dismissal of the  
case. First, the "Certificate of Service" attached to the motion is insufficient to establish proof of  
service. It is not made under penalty of perjury, fails to identify the person signing the certificate,  
and states that "the attached" was placed in a pre-paid envelope and mailed to Emilia Bardine.  
Service by mail does not comply with Fed. R. Civ. P. 4(e) and (i). And service without a summons  
and a copy of the complaint is insufficient under Fed. R. Civ. P. 4(c)(1).

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Because there is no change in material fact, there is no basis for granting the Plaintiff's  
motion.

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### **CONCLUSION**

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For the foregoing reason, the Court DENIES the Motion for Permission to File a Motion for

1 Reconsideration.

2 IT IS SO ORDERED.

3  
4 Dated: 11/20/08

*Saundra B Armstrong*  
5 Saundra Brown Armstrong  
6 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

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6 SELOMI M. VILLALTA,

Case Number: CV06-04087 SBA

7 Plaintiff,

**CERTIFICATE OF SERVICE**

8 v.

9 EMILIA BARDINI et al,

10 Defendant.

11 \_\_\_\_\_ /  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
Court, Northern District of California.

13 That on November 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
located in the Clerk's office.

17  
18 Selomi M. Villalta  
P.O. Box 11251  
San Rafael, CA 94912

19 Dated: November 21, 2008

20 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk  
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